Law Offices of Rosario Perry
Rosario Perry, State Bar #55061
1333 Ocean Avenue
Santa Monica, Ca. 90401-1028
(310) 394-9831 fax: (310) 394-4294

Attorney for Plaintiff/Petitioner
Syed Ali

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**FOR THE COUNTY OF LOS ANGELES**

| | |
|---|---|
| SYED MOUZZAM ALI,<br>Plaintiff and Petitioner<br>v.<br>CITY OF LOS ANGELES, et al.,<br>Defendants and Respondents | CASE NO. BC 008240<br>**PLAINTIFF'S REPLY BRIEF TO:**<br>**DEFENDANT CITY'S TRIAL BRIEF RE: INVERSE CONDEMNATION**<br>DATE: March 12, 1997<br>TIME: 8:30 a.m.<br>DEPT: "58"<br>(Filed March 12, 1997) |

Plaintiff/Petitioner Ali submits the following reply brief to the City's brief on the issues of Inverse Condemnation.

Defendant's brief raises some disputed issues of law and fact which the court will not be able to be decided until the first phase of the trial. However, there are some issues of law and fact the City has raised as "disputed" which have already been decided by *Ali v. City of Los Angeles,* (1995). 2nd Appellate District, Div. 4 B077712 (Not Published) (Super. Ct. No. BC008240) and, *Ali v. City*

*of Los Angeles,* (1996) Statement of Decision On Petition For Writ Of Mandate. While these issues were decided against the City, the City is continuing to dispute them on remand.

The issues which have been already decided (and which are now "law of the case" are as follows: 1. The city's refusal to issue the demolition permit in January 1989 was illegal.[1]

2. Since the City's refusal to issue the demo permit was illegal, any resulting costs for private security police to guard the burnt out building for the time period **AFTER** Ali would have demolished the building could **NOT** be charged, to Ali.[2]

3. Ali would have demolished the building on or about January 19, 1989, and the "delay after January 19, 1989 in both issuance of the permit and demolition of the building was due solely to the actions of Respondent City and that no part of the delay in issuance of the permit or demolition of the building is attributable to Petitioner [Ali]."[3]

4. As between the City and Ali, Ali is not liable for any nuisance created by the Ferraro which could have

---

[1] See Ali v. City of Los Angeles, (1995). 2nd Appellate District, Div. 4 B077712 (Not Published) (Super. Ct. No. BC008240)

[2] See Ali v. City of Los Angeles, (1995). 2nd Appellate District, Div. 4 B077712 (Not Published) (Super. Ct. No. BC008240)

[3] See Ali v. City of Los Angeles, (1996) Statement of Decision On Petition For Writ Of Mandate.

been avoided by its demolition, since the City illegally refused to allow its demolition.[4]

**Ali Disputes The Following Factual Contentions Raised In City's Brief.**

a. Ali Failed To Secure The Building Prior To City Occupation.

Ali did not fail to secure the building. The building was secured as well as it could be. Ali is maintaining that the City required him to keep a canopy constructed next to the building which acted like a step ladder for transients to enter the building. The City, upon occupancy of the property, immediately removed that canopy. Other than removing the canopy, the city did not do anything other than Ali was doing to protect the property. Ali contests the City's statement that it was forced to occupy Ali's property to protect the Ferraro, or that Ali failed to secure the Ferraro from transients,

b. The City Invaded The Property To Protect The Building.

The City invaded the property because Molina wanted to insure that the Ferraro would not be further damaged and to force ALI to build low income housing under its SROordinance. The City was not attempting to do anything for ALI, it was furthering its own governmental low income goals. Ali was trying to demolish the

---

[4] See Ali v. City of Los Angeles, (1995). 2nd Appellate District, Diva 4 B077712 (Not Published) (Super. Ct. No. BC008240.

building, not preserve it. Ali is NOT suing the city for damage caused to the building.

c. Ali Did Not Properly Secure The Ferraro Hotel.

Ali did everything that could *reasonably* be done to secure the Ferraro. The city initially ordered Ali to board up the building and build a canopy, which Ali did. When it became apparent that transients were getting into the building via the canopy, the City refused to allow Ali to remove it. The City later ordered Ali to post security guards on the property; however, Ali had already posted a security guard on the property. The City replaced Ali's guard with their own. Even that aside, however, the court of appeal in Ali v. City of Los Angeles states that Ali should not be required to post security guards to protect a building which the City has illegally refused to allow the owner to demolish. Whether or not Ali was required to post security guards to satisfy his requirements to properly secure the Ferraro (assuming there are any obligations at all) does not include paying for security guards.

d. There Was An Emergency Which Sanctioned The City's Occupation.

The nuisance condition of the property at the time of the City's occupation was the direct result of the City's actions. The city made the Ferraro a nuisance. The City should not be allowed to argue that its occupation was therefore protected. The City was only abating a nuisance that they themselves created. The law of emergency is set out in *Los Osos Valley Ass v. City of San Luis Obispo* (1994)

30 CA4th 1670 (among Ali's top 13 cases). Basically, the law holds that if there is a true emergency in the occupation of property, then there is no taking. However, if the government enters without giving the property owner notice and an opportunity to be heard about the nuisance, then the government must prove that there was an emergency, that physical possession was required, and that the government acted reasonably in abating it. Clearly, the city cannot have acted reasonably in physically occupying the property to abate a nuisance the city itself created. At least as an exception to the just compensation payment requirement.

The city created the Ferraro nuisance by

(1) not allowing its demolition. The court of appeal has already ruled that the City's refusal was illegal, and therefore Ali was entitled to reimbursement for money he had to pay the City for the cost of the private security guards.

(2) not allowing Ali to remove the canopy. The only reason the City was more successful than Ali in stopping the fires was because the City removed the canopy after they took possession, but would not allow Ali to do the same.

(3) not providing enough City police protection at the property during the time period that Ali was still in occupation of the property. If the City wanted the building to remain standing, and the existence of the building was creating a nuisance, then it was incumbent on the city (and not Ali) to pay for and provide security services.

As stated above, abatement of nuisance law requires that there be a genuine emergency, and that the government action be necessary to abate it. In Ali's case, the City not only boarded up the building, but took possession of the building. It installed security guards on the property. If the City acted "reasonably" then boarding up the building was not enough to stop the transients. This would be an admission by the City that boarding alone was not sufficient to protect the building. It is the City's burden to prove that their physical occupation of the property with the security service (rather than only boarding up the building and NOT taking physical occupation of the property) was required to stop the fires. See City Code section Exhibit # 121-8 which provides for boarding of property but NOT for physical occupation with security guards. The City had taken physical occupation of property only a few times in its entire history. Clearly, boarding without physical occupation, had worked in the past for other properties.

e. There Was No Physical Taking Because Said Occupation Was Not In Conjunction With Any Public Work Of Any Kind.

This is a legal contention. Ali is maintaining that the law states that once the government occupies someone's property a taking has occurred. *Loretto v. Teleprompter Manhattan CATV* (1982) 458 US 419 (physical invasion no matter how small requires just compensation). *Loretto* does not limit this principal [sic] with the a [sic] requirement that the physical invation [sic] has to be related to a public improvement project. City cites *Customer Co. V* [sic] *City of Sacramento* (1995) 10Cal.4th 368, 377-378 for

the proposition that there is not a physical taking under the State of California's constitution, Article 1, Section 19, unless said occupation is in conjunction with the construction, improvement or operation of a public work of any kind. However, the California Supreme Court does not have such a limitation. *Customer Co. V. City of Sacramento* (supra) dealt with a police chance of a fleeing felon and a 2 hour occupation of private property required to apprehend the felon. It did not deal with the more traditional concept of land use restrictions. In that context the court did rule about physical invasions. Approximately a year AFTER *Customer Co. v. City of Sacramento,* the court decided *Erlich v Culver City,* (1996) 12 Cal.4th 858.[5] In *Erlich* the court reviewed a city development related land use condition and reaffirmed physical invation [sic] principals [sic] of *Loretto. Erlich* stated that there were special protections given physical invasions or occupations of real property under the 5th amendment no matter how minute the intrusion, and no matter how weighty the public purpose behind it, referring with approval to *Loretto v. Telepromoter Manhattan CATV* (1982) 458 US 419 and *Lucas V. South Carolina Coastal Council* (1992) 505 U.S. 1003.

This court should note that in *Loretto* the taking was that the City forced the landowner to allow a private cable company install cable on the owner's apartment building. It had nothing to do with any public works project. In addition, there was NO damage to the property whatsoever. Indeed, the cable actually increased the

---

[5] This case is relied upon by Ali as one of the top 13 most important cases.

desirability of the property for residential rental purposes.

In Ali's case, the City did occupy the property (either rightly or wrongly) to further its own governmental purpose, i.e. to force Ali to rebuild low income rental units by insuring that the Ferraro was not destroyed. While this alleged governmental purpose was illegal (and would not qualify as a "legitimate" governmental purpose, it does show that the City was acting in its requisite official governmental capacity to create liability under inverse condemnation.

f. There Was No Taking Because Ali Was Not Denied All "Economically Viable Use Of His Land

The city next argues that there was no taking because Ali could have sold the property and gotten some money for it. This is not the test for a physical or regulatory taking. The test for a taking due to as [sic] physical occupation has been set out in *Loretto* (supra) (any physical invation [sic] of property no matter how insignificant). The test for a regulatory taking is set out in a number of recent federal Supreme Court cases, (all cited by Plaintiff in his top 13 list) from *Agins v. Tiburon* (1980) 447 U.S. 255 to *Lucas V. South Carolina Coastal Council* (1992) 505 U.S. 1003. The test is:

> a general land use regulation as applied to particular property effects a taking if the ordinance does **"not substantially advance legitimate state interests, OR denies an owner economically viable use of his land."**

This is a two part test, both of which must be satisfied. As was argued before, the city can NOT prove the SRO ordinance substantially advances legitimate state interests. Indeed the SRO ordinance was in direct violation of state interests.[6] However, the City has not addressed that part. The city has addressed the second part of the test:

> OR denies an owner economically viable use of his land

The city says that since Ali could have "sold" his property he had economically viable use of his land. This is a wrong statement of the law. In each takings case cited by Ali in his top 13, the property owner could have sold his land for something. In *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles* (1987) 482 U.S. 304, the court framed the question as whether or not the questioned regulation denied the owner "all use of its property." In Nollan the plaintiff owned beach lots which he could not build on. He could have clearly sold them to someone for some amount of money. The court focused on the allowable uses (or lack thereof) to determine the issue of lack of economically viable use and investment back expectations. Never has there been a discussion about the sale of property as a "use" which would defeat a taking claim. Otherwise the government could offer some small sum of money to the property owner as payment for the land, and avoid its constitutionally

---

[6] This test has been discussed by Ali in his brief. The cases that discuss this test are: Nollan v. Cal Coastal Commission (1987) 483 US 825, Lucas v. South Carolina Coastal Council (1992) 505 U.S. 1003 and Dolan v. Tigard, (1994) 512 U.S. ___, 129 LED 2d 304.

required full value just compensation payment. Property can always be sold for some amount of money. What causes the taking is the lack of economic viable uses for the land.

Ali was denied ALL use of his land from January 1989 to August 1990). During that time period, he could make no use of his property. He could not even occupy the property himself. The Ferraro was destroyed by the fire, and could not be rented out due to its unsafe condition. The city refused to allow Ali to demolish it, or repair it (unless he agreed to rebuild with low income housing).[7] It is undisputed that:

> (1) While the burnt out Ferraro stood, there was NO use to which the property could be put; and,
>
> (2) The only thing which prevented Ali from demolishing the Ferraro was the City's illegal SRO ordinance.

Thus the lack of use was directly related and a result of the City's illegal land use condition. Logically, there has been a taking.

---

[7] However, the court of appeals has already declared this requirement to be illegal. Therefore, the City's condition on rebuilding the Ferraro (to allow Ali a use) was illegal. An illegal government condition cannot support a city's denial of property use.

g. Ali Was Responsible For The Delay In Processing The Demolition Permit.

Since Ali is suing for a "temporary" taking[8] the City is arguing that the approximate two year delay in getting the demolition permit is Ali's fault. This is not the law. Initially, it should be noted that the Ellis Act was effective April 1996. Two cases interpreting Ellis were published August and September 1988 (before the November 17, 1988 Ferraro) fire and well before Ali's January 1989 demo permit application.[9] The court of appeal decision in *Ali v. City of Los Angeles* states:

> "The [City of Los Angeles'] SRO ordinance suffers from the same defects as the Santa Monica rent control law in *Javidzad*"

Ali as early as June 1998 identified the SRO ordinance as a violation of Ellis in a letter to Molina. And Ali's first attorney in the first lawsuit filed in August 1989 alleged an Ellis violation in the complaint. Clearly the City was on notice of the Ellis violation.[10]

This very argument (Ali was responsible for the delay) was raised at the court of appeal level and was answered against the City in that decision.

> "The City contends that appellant did not exhaust administrative remedies or timely raise the Ellis Act. We disagree. Appellant raised the

---

[8] under the holding of *First English Evangelical Lutheran Church of Glendale v. County of Los Angeles* (1987) 482 U.S. 304.

[9] See *Javidzad v. City of Santa Monica* (1988) 204 CA3d 524, and *City of Santa Monica v. Yarmark*, 203 CA3d 153.

[10] And even if they somehow were not, they have an obligation to know the law.

> Ellis Act in the superior court in his first amended complaint and in one of his trial briefs." (*Ali v. City*, at page 7).

Finally, the City maintains in this "Ali is responsible for delay" argument, that somehow the damages should be less since Ali took so long to give the City information which showed that the Ferraro was not an SRO. However, Ali's "taking" lawsuit is NOT based on the fact that the Ferraro was improperly classified an SRO. It is based on the fact that even if it were an SRO, denying permission to demolish any apartment building (even an SRO) is a violation of Ellis Act and a taking of one's property. So the delay in proving the Ferraro was not an SRO does not go to the "taking" violation at all.

**Conclusion**

Plaintiff Ali is suing the City of Los Angeles under the theory of inverse condemnation, for damages he sustained due to:

> (1) The City's refusal to issue him a demolition permit starting in January 1989; and
>
> (2) The City's physical occupation of his property starting on August 17, 1898. [sic] Inverse condemnation consists of two different types of takings: First, a "regulatory taking" and Second, a "possessory taking." Normally, most lawsuits deal with one or the other type of taking. In this case, however, both types of takings are involved.

What has been shown in these briefs is that Plaintiff's first rule of taking determination (set out in his opening brief) is just as important as ever.

The **FIRST** established rule is that the determination [of whether or not there is a taking] is a fact-intensive case by case inquiry, with no fixed formula. Each case must be analyzed closely for its own factual nuances.

> "Such forms of [land use] regulation are analyzed by engaging in the "essentially ad hoc, factual inquiries" necessary to determine whether a – regulatory taking has occurred. Kaiser Aetna v. United States, (1979) 444 US 164, 176" *Yee v. City of Escondido*, (1992) 503 U.S. 509, 118 L. Ed 2d., at 166.[11]

But this trial court should not make each and every factual determination all over again. There have been important factual and legal issues already decided by the *Ali v. City of Los Angeles* court of appeal decision. These should not be forgotten. They are "law of the case."

Dated March 10, 1997

Respectfully submitted

/s/ Rosario Perry
Rosario Perry
Attorney For Plaintiff/ Petitioner Ali

---

[11] See also *Blue Jeans Equities West v. City* [sic] *San Francisco* (1992) 3 Cal.App.4th 164 "It is settled that any regulation of economic interests which "goes too far" becomes a "taking" under principles of inverse condemnation. Penna. Coal Co. V. Mahon (1922) 260 US 393, 415; However there is no set formula for determining what constitutes a "taking," the courts rely instead on ad hoc, factual inquiries into the circumstances of individual cases.

# APPENDIX N

Law Offices of Rosario Perry
Rosario Perry, State Bar #55061
1333 Ocean Avenue
Santa Monica, Ca. 90401
(310) 394-9831 fax: (310) 394-4294

Attorney for Petitioner/Plaintiff
SYED MOUZZAM ALI

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

| | |
|---|---|
| SYED MOUZZAM ALI, Petitioner/Plaintiff, v. CITY OF LOS ANGELES, a Municipal Corporation; ACTION GUARD SECURITY INVESTIGATIONS, INTERCON SECURITY and DOES 1 through 100 inclusive, Respondents/ Defendants. | CASE NO. BC 008240<br>(PROPOSED) SECOND AMENDED COMPLAINT FOR:<br>1. PETITION FOR WRIT OF ADMINISTRATIVE MANDATE (CCP 1094.5);<br>DAMAGES FOR:<br>2. DEPRIVATION OF CIVIL RIGHTS;<br>3. INTERFERENCE WITH CON TRACT [sic];<br>4. TRESPASS;<br>5. NEGLIGENCE; AND<br>6. INVERSE CONDEMNATION |

Petitioner/Plaintiff SYED MOUZZAM ALIi [sic], petitions this Court for a writ of man-date under Code of Civil Procedure, Section 1094.5, directed to re.pondent/ defendant, CITY OF LOS ANGELES, and also by this

verified petition/complaint alleges causes of action against Defendants as follows:

## ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

1. Petitioner/plaintiff is an individual, and at all relevant times herein mentioned resided within the City of Los Angeles and was the owner in fee simple of real Property commonly known as 2065 West Sixth Street, situated in the City of Los Angeles, Los Angeles County, California (hereinafter designated as the "Property") and more particularly described as follows:

> Lots 35, 36 and 37 of the extension of Nob Hill Tract, as per map recorded in Book 42, page 56 of Miscellaneous Records of Los Angeles County.

2. Respondent/defendant, CITY OF LOS ANGELES (hereinafter referred to as "City"), is and was at all times herein mentioned, a public entity organized and existing under the laws of the State of California.

3. The Los Angeles City Department of Building and Safety (hereinafter referred to as "Department") is, and was at all times herein mentioned, a branch, department or division of the City and a public agency charged with certain duties, including the issuance of demolition permits for buildings within the City of Los Angeles.

4. Petitioner/plaintiff is informed and believes and thereon alleges that respondent/defendant, ACTION GUARD SECURITY INVESTIGATIONS (hereinafter referred to as "Action Guard"), is a business entity, that, sometime during the period from on or about August 17,

1989 to August 8, 1990, occupied, patrolled and controlled the Property with 24-hour armed personnel thereon.

5. Petitioner/plaintiff is informed and believes and thereon alleges that respondent/defendant, INTERCON SECURITY (hereinafter referred to as "Intercon"), is a business entity, that sometime during the period from on or about August 17, 1989 to August 8, 1990, occupied, patrolled and controlled the Property with 24-hour armed personnel thereon.

6. Petitioner/plaintiff is ignorant of the true names and capacities, whether individual, corporate, associate, or otherwise, of respondents/ defendants sued herein as Does 1 through 100, inclusive, and therefore sues these respondents/defendants by such fictitious names. Petitioner/plaintiff will amend this complaint to allege their true names and capacities when ascertained. Petitioner/plaintiff is informed and believes and thereon alleges that each of the fictitiously named respondents/defendants is negligent or otherwise responsible in some manner for the occurrences herein alleged, and that petitioner/plaintiff's injuries and damages as herein alleged were proximately caused by such respondents/defendants.

7. At all times herein mentioned each respondent/defendant, including Does 1 through 100, was the agent, servant, and employee of each of the remaining respondents/defendants, and in doing the things hereinafter alleged were acting within the purpose and scope of their authority as such agent, servant, and employee, and with the knowledge, permission and consent, express or

implied, of each of the remaining respondents/defendants.

8. On or about November 17, 1988, the Property was severely damaged by fire and as a result thereof, the City, through the Department, issued an order to comply (order #A 95162) ordering petitioner/plaintiff to "Demolish and remove the remaining portion of the building that is damaged beyond repair" The order estimated that the structure had been damaged to the extent of 35%.

9. On or about January 19, 1989, petitioner/plaintiff applied to the Department for a demolition permit. At the time of the application, it was economically infeasible to repair the building due to the extent of the damage.

10. On or about January 31, 1989, and thereafter, the Department, under orders from the City, the Los Angeles City Council and Does 1 through 50, and each of them, refused to act on and/or approve the application for a demolition permit on the basis that it determined that the Property was a single room occupancy hotel and could not be demolished. Petitioner/plaintiff was not apprised of this until June 14, 1989, by letter from City Councilwoman Gloria Molina.

11. On or about February 13, 1989, the Department issued an abate order (order CA 3120H), ordering petitioner/plaintiff to demolish the building on the Property on the basis that it was not repairable.

12. On or about March 16, 1989, the Department issued a second abate order (order #A 3021H) reversing and/or superseding the February 13, 1989 abate order. This March 16, 1989, order determined that the Property

was repairable despite the damage caused by the November 17, 1988, fire.

13. In or about July, 1989, additional fires broke out in the building, and on or about August 10, 1989, the Department issued another order to comply (order #K 93158) ordering petitioner/plaintiff to secure the building and all openings from entry from the exterior of the building and maintain same secured. The City, by resolution adopted by the Los Angeles City Council on August 8, 1989, ordered the Department to secure the Property and maintain a private armed security service at the City's expense with a lien for costs and expenses attaching to the Property. The City then caused to be removed the canopy which petitioner/plaintiff had installed around the building pursuant to City Order in December, 1988. The canopy had been installed to protect pedestrians at a cost to petitioner/plaintiff of $15,751.68.

14. Respondents/defendants, City, Action Guard, Intercon and Does 51 through 100, thereafter barred petitioner/plaintiff from all access to his Property.

15. Petitioner/plaintiff filed a claim for damages with the City on September 6, 1989, pursuant to the California Tort Claims Act as set forth in Government Code Sections 900-978.8.

16. It was petitioner/plaintiff's intention in seeking a demolition permit to remove the structure remaining on the Property because it constituted a public hazard, and to go out of the residential rental business as a landlord, as allowed by Government Code Section 7060 *et seq.*

17. The City, the Department, and Does 1 through 50 refused to grant petitioner/plaintiff's January 19, 1989, application for a demolition permit because the City wrongfully designated the Property an SRO (single room occupancy) hotel. An SRO hotel is defined by Los Angeles City Ordinance 162,663, and extended by Ordinances 163,182, 163,622, 164,175 and 164,827, as:

> "An apartment building, hotel or other structure containing six or more guest rooms in which thirty percent (30%) or more of the units do not contain a private bath and toilet facility within the unit"

18. Under said ordinances, no SRO hotel may be demolished except to comply with an order issued by the Department upon determination that the building is "infeasible to repair."

19. The City classified the Property as an SRO hotel although the Property contained units in which less than thirty percent (30%) of them did not include private bath and toilet facilities. The City also determined that the Property was feasible to repair.

20. The City, Does 1 through 50 and the Department advised petitioner/plaintiff that they conditioned his application for a demolition permit upon replacing the Property with a like number of low-income residential units.

21. Petitioner/plaintiff filed an appeal from the actions of the City, Does 1 through 50 and the Department, on or about March 13, 1990, and said appeal was deemed filed by the Department on or about April 30, 1990.

22. The Department affirmed its previous decisions regarding the Property and denied petitioner/plaintiff's appeal on all issues at the hearing on June 12, 1990.

23. Any further appeal therefrom was futile or not available as the City, Does 1 through 50 and the Department had indicated to petitioner/ plaintiff that any appeal would be denied.

24. On or about August 1, 1990, the City, through Barbara Zeidman, Director of the Rent Stabilization Division in the Community Development Department, determined that the Property was not an SRO hotel in that more than 70% of the rooms were equipped with bath facilities. The Property was thus exempted from Ordinance 165,145 and a demolition permit was issued.

25. The assessments for security services were approved at separate council actions and adopted by resolution of the Los Angeles City Council on or about August 17, 1990, September 5, 1990, and January 8, 1991, in the amounts of $61,107.20, $112,716.80 and $201,686.02, respectively.

26. The City's final assessment was not approved and adopted until January 8, 1991, and the final notices of assessment were not submitted to petitioner/plaintiff by the City until April, 1991, although the structure on the Property was demolished and removed on or about August 15, 1990, and security services were terminated on that date.

27. As a result of these assessments, petitioner/ plaintiff was forced to expend $375,509.02 plus costs and

interest, to pay the City liens and clear title to the Property. On or about May 29, 1992, petitioner/plaintiff filed with the City a claim for refund of these amounts.

28. As a result of respondents/defendants' failure to correct the zoning designation and grant the permit to demolish the Property, petitioner/ plaintiff was forced to pay property taxes during the period from January, 1989 to January, 1991.

29. As a result of respondents/defendants' failure to correct the wrongful zoning designation and grant the permit to demolish the Property, petitioner/plaintiff was prevented from selling the Property at the price contracted for in December, 1988, and suffered a decrease in the sale price in the amount of $400,000.00, and a loss in value in a greater sum according to proof.

30. Petitioner/plaintiff is personally obligated to pay his attorney for services in prosecuting this action. Petitioner/plaintiff is entitled to recover attorney's fees as provided in Government Code Section 800 if he prevails in the within action, on the ground that the Department's decision was the result of arbitrary and capricious action, as follows: the Department's decision, as adopted by the City, that the Property was an SRO hotel which was less than 50% destroyed (thereby prohibiting issuance of a demolition permit), was made to coerce petitioner/plaintiff into constructing low income housing.

31. On August 6, 1990, petitioner/plaintiff, through his counsel, requested that the Department of Building and Safety Commission and Department of Building and Safety Advisory Appeal Board prepare a true and correct copy of the administrative record. A true and correct

copy of the record will be lodged with the Court before the hearing date.

## FIRST CAUSE OF ACTION

(Petition for Writ of Administrative Mandate Against the City and Does 1 through 50)

32. Petitioner/plaintiff realleges and here incorporates by this reference each and every allegation contained in paragraphs 1 – 31 of this Second Amended Complaint as though here fully set forth.

33. Under Section 91.8903(g)(2) of the Los Angeles Municipal Code, the Department has discretion to determine whether grounds exist for granting or denying an application for a demolition permit, and especially to determine whether a structure is classified an SRO hotel, and whether a structure is irreparable due to fire damage. Pursuant to Section 91.8903(g) (2) (c) of the Los Angeles Municipal Code, the Department is authorized and required to hold a hearing and take evidence in its proceedings for the determination of those facts.

34. Hearings were held on May 31, 1990, at 200 North Main Street, Room 1325, Los Angeles California, in front of the Advisory Appeals Board, and on June 12, 1990 at 200 North Spring, Room 252, Los Angeles California, in front of the Building and Safety Commission, to receive evidence on the issues under appeal, among which were whether the Property was an SRO hotel and whether it was damaged in excess of 50%. Petitioner/ plaintiff attended the hearings. On June 12, 1990, petitioner/ plaintiff received the Department's decision and order that the Property was an SRO hotel, and that the

percentage of destruction caused by fire was less than 50%. The City thereafter adopted that decision as its own.

35. The Department's decision and order are invalid under Code of Civil Procedure Section 1094.5 for the following reasons;

(1) The Department committed a prejudicial abuse of discretion in that the hearing officer of the Building and Safety Commission meeting #7352 found that the Property consisted of rooms of which less than 30% had their own bathroom facilities. The evidence received at the hearing does not support this finding, as petitioner/plaintiff alleges more particularly hereinafter; and

(2) The hearing officer of the Building and Safety Commission Meeting #7352 found that the Property was damaged by fire only to the extent of 35%. The evidence received at the hearing does not support this finding, as petitioner/plaintiff alleges more particularly hereinafter.

36. The substance of the evidence received at the Building and Safety Commission Meeting #7352 is as follows: Engineer's Preliminary Report dated December 8, 1988, setting forth that the cost to repair the Property was $1,500,000; County Assessors assessment, dated December 27, 1988 setting forth that the Property suffered a 90% loss for tax purposes; Sworn Statement and Proof of Loss from petitioner/plaintiff's insurer, dated January 1, 1989, declaring a 100% loss on the contents of the structure; 230 page room-by-room repair estimate completed on January 4, 1989, at the request of petitioner/plaintiff's insurer and prepared by Driver-Eddy Construction Company setting forth that the cost to repair the

structure was $1,375,850.37 and that the rooms with private baths represented more than 70% of the total rooms; Appraisal Report prepared by Appraisal Associates, dated November 11, 1988, setting forth that the value of the structure was $1.43 – $2 million; report of consulting structural engineers, Farhad/Tabibzadeh, setting forth a damage estimate of 80%; letter from proposed developer, Hafco & Associates, dated June, 1989, setting forth that the structure would have to be torn down due to massive damage; Report of Investigation prepared by Mackintosh & Mackintosh Consulting Engineers dated May 4, 1990, setting forth that the extent of fire damage is 72.4%; Appraisal Report dated September 30, 1988, prepared by Tracey Lee of CASA-SOL, setting forth that value of the structure was $1,317,500.00; list from Counter "D" of the Department of all SRO hotels in Los Angeles, setting forth that the Property was not included; and Rental Housing Project Income Analysis and Appraisal based on inspection, prepared on January 5, 1983, submitted for the M.O.R.E. loan program to the Rehabilitation Project Coordinator of the City of Los Angeles, setting forth that 63 of 77 rooms of the Property were equipped with separate bathroom facilities, that out of 77 rooms, 70 were equipped with bathrooms and only 14 rooms had shared bath facilities. The evidence does not support the findings for the following reasons: the Property is not an SRO hotel in that more than 70% of the rooms are equipped with separate bathrooms and the Property was more than 358 [sic] – destroyed at the time the application for a demolition permit was made.

37. The following evidence was not presented at the hearing: letter dated August 1, 1990, from the City of Los

Angeles Rent Stabilization Division, setting forth that the Property had more than 70% of the rooms equipped with bath facilities and is not an SRO hotel. This evidence was not presented in that the letter was received after the hearing. This evidence establishes that the City and Department wrongly classified the Property as an SRO hotel and failed to correct the designation despite the evidence previously available within the City's records and additionally presented, establishing that the Property is not an SKO [sic] hotel.

38. As a result of the Department's findings, the Department continued to refuse to grant petitioner/plaintiff's application for a demolition permit and petitioner/plaintiff continued to be liable for the cost of the City-ordered 24-hour security patrol for the Property.

39. Respondents/defendants abused their discretion by failing to correct the wrongful zoning designation placed on the Property, by failing to find that the Property had been damaged in excess of 50%, by refusing to grant petitioner/plaintiff's application for a demolition permit, by requiring petitioner/plaintiff to pay $375,509.02, plus costs and interest, for City-contracted security services and $5,290.05 for weed abatement and by failing to submit notice of final assessment against the Property until ten months after the building was demolished. In addition, the City improperly removed security guards and measures placed on the premises by petitioner/plaintiff and installed or put their own in place. All charges and expenses connected with the City-placed security were improperly charged to petitioner/plaintiff.

40. The City is a local agency. A fundamental vested right is involved in that the City, the Department, and Does 1 – 50 refused to grant petitioner/plaintiff a permit to demolish the structure on his Property in order that he could go out of the rental housing business and sell his Property. Also, the City's placement of security guards and measures on petitioner/ plaintiff's premises resulted in denial of fundamental vested rights to the control of the real property. Therefore, the scope of review is under the Independent Judgment Test.

41. Petitioner/plaintiff is a person beneficially interested in the issuance of a writ by virtue of the fact that he personally has expended $375,509.02, plus costs and interest, to pay the City assessments for security services, $5,290.05 for weed abatement, suffered a loss in value of the property and a decrease in sales price due to the delay in the sale of the Property caused by the Department's refusal to grant his application for a demolition permit , and has expended $21,260.34, plus penalties, in property taxes for the Property during the time he was prevented from completing the sale, as a result of the City's refusal to grant the demolition permit.

42. Petitioner/plaintiff performed all conditions precedent to the filing of the first amended complaint and petition for writ by exhausting all available administrative remedies required to be pursued by him as follows: petitioner/plaintiff filed an appeal of the Department's action on or about April 30, 1990, and was present at the hearings of that appeal with the Advisory Appeal Board on May 31, 1990, and Building and Safety Commission Meeting #7352 on June 12, 1990. Petitioner/plaintiff did not appeal the decision of the Department in that he was

informed by the City and the Department that any appeal, if available, of the decision would be denied.

43. Petitioner/plaintiff has no plain, speedy, and adequate remedy in the ordinary course of law, other than the relief sought in this petition in that respondents/defendants' prejudicial abuse of discretion can only be controlled by a proceeding in mandamus.

44. As a result of respondents/defendants' actions, petitioner/plaintiff has sustained damages as follows: $375,509.02, plus costs and interests, in security services and $5,290.05 for weed abatement assessed by the City; $21,260.34, plus penalties, in property taxes during the period from January, 1989 to January, 1991, wherein petitioner/plaintiff was prevented from selling the Property pursuant to the December, 1988, purchase and sale agreement; a $400,000.00 decrease in the sales price of the Property as the difference between the contract price in December, 1988, and the actual price in April, 1991; an increase in demolition costs from $35,000.00 to $70,000.00 due to the Department's delay in granting the permit; a decrease in the value of the Property due to the wrongful zoning designation and delay in issuing the demolition permit; and loss of use of the money petitioner/plaintiff was to gain on sale of the Property under the December, 1988, contract. Respondents/defendants are liable for these damages by reason of their refusal to correct the wrongful SRO hotel designation despite ample evidence presented establishing that the Property was not an SRO hotel and their refusal to find that the building was infeasible to repair despite ample evidence presented establishing that the building was 80% – 100% destroyed.

Petitioner/plaintiff is entitled to recover these damages under Code of Civil Procedure Section 1095.

## SECOND CAUSE OF ACTION
## (DEPRIVATION OF CIVIL RIGHTS AGAINST ALL RESPONDENTS/DEFENDANTS)

45. Petitioner/plaintiff realleges and here incorporates by this reference each and every allegation contained in paragraphs 1 through 44 of this Second Amended Complaint as though here fully set forth.

46. This cause of action arises under the Civil Rights Act of 1871 (42 USC Section 1983) as hereinafter more fully appears. This court has jurisdiction under 28 USC Section 1343.

47. At all times herein mentioned, petitioner/plaintiff was, and now is, a person within the jurisdiction of the United States, and was residing within the City of Los Angeles, Los Angeles County, California.

48. At all times herein mentioned, respondents/defendants, in doing all of the things hereinafter mentioned, acted under color of their authority as such, and under color of the statutes, regulations, customs, and usages of the State of California, the City of Los Angeles, and the aforementioned Department and respondents/defendants, and pursuant to the official policy of the City as created by the Los Angeles City Council, took action under color of their authority as such.

49. On or about August 17, 1989, respondents/defendants wrongfully and unlawfully entered the Property, displayed police badges and other governmental

identification cards, stated that they were on official government business, and proceeded to take over possession and control of the Property, remove all other persons from the Property, remove all incidental and temporary structures from the Property, remove all protective scaffolding from around the Property, place a privately-contracted security service on the Property, and thereafter placed liens and encumbrances on the Property.

50. Petitioner/plaintiff in no way consented to respondents/defendants entry or subsequent conduct, but protested the same until his protests were overcome by these respondents/defendants' threats and shows of force.

51. By reason of respondents/defendants' entry onto the property and their conduct thereon, petitioner/plaintiff was deprived of rights, privileges, and immunities secured to him by the Constitution of the United States and laws enacted thereunder in that the seizures amounted to an arbitrary intrusion by these respondents/defendants into the security of petitioner/plaintiff's privacy, person, and property and were not authorized by law, and in that the action of these respondents/defendants deprived petitioner/plaintiff of life, liberty, and property without due process of law.

52. As a result of the deprivations of his rights, petitioner/plaintiff was injured, subjected to humiliation and indignity, and prevented from transacting his business, and suffered great physical, emotional and mental pain and suffering all to his damage in a sum in excess of the minimum jurisdictional limit of the Court in an exact amount to be proven at trial.

53. As a further result of the acts of these respondents/defendants, petitioner/plaintiff's Property was damaged in a sum in excess of the minimum jurisdictional limit of the Court in an exact amount to be proven at trial.

54. At all material times and in doing the things alleged, respondents/ defendants' conduct was intended to cause injury to petitioner/plaintiff herein, respondents/defendants acted fraudulently, oppressively, maliciously, and/or in conscious disregard of petitioner/ plaintiff's rights, and with the intention of wrongfully interfering with petitioner/plaintiff's rights, prospective economic position, and property interests. Therefore, petitioner/plaintiff is entitled to punitive and exemplary damages in a sum in an exact amount to be determined at trial.

## THIRD CAUSE OF ACTION

### (Interference With Contract Against All Respondents/Defendants)

55. Petitioner/plaintiff realleges and here incorporates by thisreference [sic] each and every allegation contained in paragraphs 1 through 54, of this Second Amended Complaint as though here fully set forth.

56. On or about December 16, 1988, petitioner/ plaintiff entered into a written agreement with Faradj-Ollah Harouni, wherein said party would purchase the Property from petitioner/plaintiff upon the condition that petitioner/plaintiff demolish the remaining structure on the Property and convey the Property free of any liens.

57. Respondents/defendants, and each of them, were given notice on numerous occasions by the petitioner/plaintiff, his agents and the buyers of the Property under said contract, and intentionally interfered with said contract by refusing to grant petitioner/plaintiff a permit to demolish the structure on the Property.

58. The City failed to render its final assessment on the Property for security services until January 8, 1991, and failed to submit final Notice thereof until April, 1991, although it was on notice that the buyer under the contract was prevented from completing the purchase unless and until the city approved the final assessment against the Property.

59. As a direct, actual and proximate result of the actions of the respondents/defendants, and each of them, petitioner/plaintiff has sustained injuries and damages, including but not limited to, being unable to comply with the terms of said written contract, the full extent of which will be proven at the time of trial.

60. At all material times and in doing the things alleged, respondents/defendants acted in an arbitrary, capricious and illegal manner by wrongfully classifying the Property as an SRO hotel and in refusing to grant the demolition permit. Respondents/defendants' conduct was intended to cause injury to petitioner/plaintiff herein, in acting fraudulently, oppressively, maliciously, and/or in conscious disregard of petitioner/plaintiff's rights, and with the intention of wrongfully interfering with petitioner/plaintiff's rights, prospective economic position, and property interests. Therefore, petitioner/

plaintiff is entitled to punitive and exemplary damages in an amount to be proved at trial.

## FOURTH CAUSE OF ACTION

(Trespass Against Action Guard, Intercon and Does 51 – 100)

61. Petitioner/plaintiff realleges and here incorporates by this reference each and every allegation contained in paragraphs 1 through 60, of this Second Amended Complaint as though here fully set forth.

62. On or about August 17, 1989, and continuing to August 15, 1990, respondents/defendants Action Guard, Intercon, and Does 51 – 100 and each of them, without petitioner/plaintiff's consent, entered the Property, took possession and control of the Property, and deprived petitioner/plaintiff of possession and control of the property.

63. As a proximate result of the trespassory conduct of these respondents/defendants as descibed [sic] above and in the proceeding paragraph, petitioner/plaintiff's property has been damaged in a sum in excess of the minium [sic] jurisdictional limit of the court, in an exact amount to be proven at trial.

64. As a further result of the trespassory conduct of these respondents/ defendants as described above and in paragraph 62, petitioner/plaintiff has suffered great humiliation and indignity, has been prevented from transacting his business, and suffered great physical,

emotional and mental pain and suffering all to his damage in a sum in excess of the minium [sic] jurisdictional limit of the court, in an exact amount to be proven at trial.

65. At all material times and in doing the things alleged, these respondents/defendants' conduct was intended to cause injury to petitioner/plaintiff herein, in acting fraudulently, oppressively, maliciously, and/or in conscious disregard of petitioner/plaintiff's rights, and with the intention of wrongfully interfering with petitioner/plaintiff's rights, prospective economic position, and property interests. Therefore, petitioner/plaintiff is entitled to punitive and exemplary damages in a sum to be proved at trial.

## FIFTH CAUSE OF ACTION

(Negligence against all defendants)

66. Petitioner/Plaintiff realleges and here incorporates by this reference, each and every allegation contained in paragraphs 1 through 53 and 55 through 59 and 61 through 64 of this Second Amended Complaint, as though here fully set forth.

67. During all or some portion the time period from approximately November 1988, through April, 1991, Defendants/Respondents, and each of them, negligently and carelessly reviewed Petitioner/Plaintiff's applications for demolition permits, and entered onto real property owned by Petitioner/Plaintiff, controlled, maintained and purportedly protected said real property in a negligent and careless manner.

68. As a proximate result of the negligence of Defendants/Respondents and each of them, petitioner/plaintiff has been injured, subjected to loss of personal property, loss of value of real property and other real property, losses and expenses, indignity, and humiliation, deprived of his property and rights, prevented from transacting his business, and has suffered great economic, physical, emotional, and mental pain and suffering, and in addition there was physical damage to the property and loss of personal property from the property, all to his damage in a sum in excess of the minium [sic] jurisdictional limit of the Court in an exact amount to be proven at trial.

SIXTH CAUSE OF ACTION

(Inverse Condemnation Against all Defendants)

69. Petitioner/plaintiff realleges and here incorporates by this reference, each and every allegation contained in paragraphs 1 through 68 of this Second Amended Complaint as though here fully set forth.

70. From approximately November, 1988, through April, 1991, petitioner/plaintiff was the owner in fee of the Property commonly known as 2065 West Sixth Street, City of Los Angeles, County of Los Angeles, State of California and more particularly described as follows:

> Lots 35, 36 and 37 of the extension of Nob Hill Tract, as per map recorded in Book 42, page 56 of Miscellaneous Records of Los Angeles County.

71. From approximately November, 1988, through April, 1991, Respondents/Defendants allowed damage to

the Property and prevented petitioner/plaintiff from entering upon, using, controlling, maintaining, and exercising ownership rights over the Property in that, *inter alia*, petitioner/ plaintiff was denied a demolition permit without valid grounds for the denial, denied access to his Property and denied control over the Property, which constituted a taking of the property.

72. As a direct and proximate result of the actions by Respondents/ Defendants, Petitioner/Plaintiff was damaged at least as follows:

$375,509.02, plus costs and interests, in security services and $5,290.05 for weed abatement assessed by the City; $21,260.34, plus penalties, in property taxes during the period from January, 1989 to January, 1991, wherein petitioner/plaintiff was prevented from selling the Property pursuant to the December, 1988, purchase and sale agreement; a $400,000.00 decrease in the sales price of the Property as the difference between the contract price in December, 1988 and the actual price in April, 1991; an increase in demolition costs from $35,000.00 to $70,000.00 due to the Department's delay in granting the permit; a decrease in the value of the Property due to the wrongful zoning designation and delay in issuing the demolition permit; and loss of use of the money petitioner/plaintiff was to gain on sale of the Property under the December, 1988, contract, and there was physical damage to the property and loss of personal property, all to the damage of Petitioner/Plaintiff in a total amount to be proven at trial.

73. Petitioner/Plaintiff has received no compensation for the damage to his property or for the taking.

74. Petitioner/Plaintiff has incurred and will incur attorney's, appraisal and engineering fees because of this proceeding, in amounts that cannot yet be ascertained, which are recoverable in this action under the provisions of Section 1036 of the California Code of Civil Procedure.

WHEREFORE, petitioner/plaintiff prays that:

*On the First Cause of Action*

1. A peremptory writ of mandate issue, pursuant to Code of Civil Procedure, Section 1094.5, directed to respondent/defendant City and compelling respondent/defendant City to rescind the assessments against petitioner/plaintiff on the amount in excess of $375,509.02 for security services, plus costs and interests in the total amount of $399,060.56, and $5,290.05 for weed abatement and return to petitioner/plaintiff the full amount paid to the City plus interest thereon; to pay damages of $21,260.34, plus penalties, to petitioner/plaintiff representing Property taxes petitioner/plaintiff was wrongfully required to pay during the time the City's actions prevented him from selling the property pursuant to the purchase and sale contract described above; to pay damages of $400,000.00 representing a decrease in sales price of the Property as a result of the delay and litigation caused by the City's refusal to allow demolition of the Property; to pay damages for loss in value of the Property caused by the City's conduct in an amount to be proven at trial; to pay damages in the amount of $35,000.00 for increased demolition costs; to pay petitioner/ plaintiff damages for loss of use of the money to be gained on sale of the Property pursuant to the December, 1988 contract for sale;

2. Respondent/defendant City be required to pay petitioner/plaintiff his attorney's fees pursuant to Section 800 of the Government Code;

*On the Second Cause of Action*

3. Respondents/defendants be required to pay to petitioner/plaintiff damages in a sum in excess of the minium [sic] jurisdictional limit of the Court, in an exact amount to be proven at trial;

4. Respondents/defendants be required to pay to petitioner/plaintiff exemplary and punitive damages to deter respondents/defendants from future similar conduct and punish them for their conduct herein in an amount to be proved at trial.

5. Respondent/defendant City be required to pay petitioner/plaintiff attorney's fees pursuant to Section 1988 of Title 42 of the United States Code;

*On the Third Cause of Action*

6. Respondents/defendants be required to pay to petitioner/plaintiff damages in a sum in excess of the minium [sic] jurisdictional limit of the Court, in an exact amount to be proven at trial;

7. Respondents/defendants be required to pay to petitioner/plaintiff exemplary and punitive damages to deter these respondents/defendants from future similar conduct and punish them for their conduct herein in an amount to be proved at trial.

*On the Fourth Cause of Action*

8. Respondents/defendants be required to pay to petitioner/plaintiff damages in a sum in excess of the

minium [sic] jurisdictional limit of the Court, in an exact amount to be proven at trial;

9. Respondents/defendants, Action Guard, Intercon and Does 51 through 100 be required to pay to petitioner/plaintiff exemplary and punitive damages to deter these respondents/defendants from future similar conduct and punish them for their conduct herein in an amount to be proven at trial.

*On the Fifth Cause of Action*

10. General damages in a sum to be proved at trial;

11. Damage to personal property in a sum to be proved at trial;

*On the Sixth Cause of Action*

12. Damages in a sum to be proved at trial, together with interest at the legal rate from the date of the damages;

13. Reasonable attorney's, appraisal and engineering fees according to proof;

*On All Causes of Action*

14. Respondents/defendants be required to pay petitioner/plaintiff's attorney fees pursuant to Code of Civil Procedure Section 1021.5;

15. Respondents/defendants be required to pay petitioner/plaintiff's costs of suit herein incurred; and

16. For such other and further relief as the court may deem just and proper.

DATED: OCTOBER 4, 1995 LAW OFFICES OF ROSARIO PERRY

BY: /s/ Rosario Perry
Rosario Perry
Attorneys for
Petitioner/Plaintiff
SYED MOUZZAM ALI